## Chapter 11.00

## MONEY LAUNDERING OFFENSES

*Introduction to Money Laundering Instructions*

The main money laundering statute, 18 U.S.C. § 1956, defines the crime in three subsections. Subsection (a)(1) covers domestic financial transactions; subsection (a)(2) covers international transportations; subsection (a)(3) covers undercover investigations. Diagrams of the three subsections appear in the appendix.

The instructions describe the crimes of § 1956 in five instructions. Instructions 11.01 and 11.02 cover subsection (a)(1)(domestic financial transactions). Instructions 11.03 and 11.04 cover subsection (a)(2)(international transportations). Instruction 11.05 applies to subsection (a)(3)(undercover investigations).

The Committee drafted two instructions for each of the first two subsections, (a)(1) and (a)(2), mainly because of different mens rea options within each subsection. Under (a)(1), Instructions 11.01 and 11.02 (which reflect subsections (a)(1)(A) and (a)(1)(B) respectively) are similar; the only difference is in the mens rea element. For (a)(1)(A), the mens rea is intent, either to promote the carrying on of specified unlawful activity (characterized as "promotional money laundering" in United States v. McGahee, 257 F.3d 520, 526 (6th Cir. 2001)) or to violate certain tax laws. For (a)(1)(B), the mens rea is knowledge that the transaction was designed either to conceal the proceeds of specified unlawful activity (characterized as "concealment money laundering," *id.*) or to avoid a reporting requirement.

Under § 1956(a)(2), Instructions 11.03 and 11.04 (which cover subsections (a)(2)(A) and (a)(2)(B) respectively) again reflect differences in the two subsections. The first difference is the mens rea. For (a)(2)(A), the mens rea is intent to promote the carrying on of specified unlawful activity; for (a)(2)(B), the mens rea is knowing that the funds are proceeds of crime and knowing that the transaction was designed either to conceal the proceeds of specified unlawful activity or to avoid a reporting requirement. A second possible difference between the two subsections is less clear. This difference between (a)(2)(A) and (a)(2)(B) is that subsection (a)(2)(B) arguably requires that the funds involved be proceeds of unlawful activity whereas subsection (a)(2)(A) clearly does not. These distinctions are discussed in more detail in the commentaries to the instructions.

Section 1956(a)(3) is covered in Instruction 11.05.

The Committee also drafted Instruction 11.06 to cover the money laundering crime of Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity (18 U.S.C. § 1957).

## Chapter 11.00

## MONEY LAUNDERING OFFENSES

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**Instruction**

**11.01 MONEY LAUNDERING – Domestic Financial Transaction (18 U.S.C. § 1956(a)(1)(A)(intent to promote the carrying on of specified unlawful activity))**

(1) Count ___ of the indictment charges the defendant with [conducting] [attempting to conduct] a financial transaction in violation of federal law. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [conducted] [attempted to conduct] a financial transaction.

(B) Second, that the financial transaction involved property that represented the proceeds of [*insert the specified unlawful activity from § 1956(c)(7)*].

(C) Third, that the defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity.

(D) Fourth, that the defendant had the intent [to promote the carrying on of [*insert the specified unlawful activity from § 1956(c)(7)*]] [to engage in conduct violating §§ 7201 or 7206 of the Internal Revenue Code of 1986].

(2) Now I will give you more detailed instructions on some of these terms.

(A) The term "financial transaction" means [*insert definition from § 1956(c)(4)*].

(B) [The term "financial institution" means [*insert definition from 31 U.S.C. § 5312(a)(2) or the regulations promulgated thereunder*]].

(C) The word "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(D) The word "proceeds" includes what is produced by or derived from unlawful activity.

(E) The phrase "knew that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the defendant knew the property involved in the transaction represented the proceeds of some form, though not necessarily which form, of activity that constitutes a felony under state or federal [foreign] law. [The government does not have to prove the defendant knew the property involved represented proceeds of a felony as long as he knew the property involved represented proceeds of some form of unlawful activity.]

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**Use Note**

Brackets indicate options for the court.

The definition of financial institution in paragraph (2)(B) should be given only when a financial institution is used to prove the presence of a financial transaction.

The final bracketed sentence in paragraph (2)(E) should be given only when the defendant raises as an issue whether he knew that the unlawful activity which generated the proceeds was a felony or a misdemeanor.

**Committee Commentary Instruction 11.01**

The purpose of this instruction is to outline the elements of the crime of money laundering through a domestic financial transaction based on a mens rea of intent, which is characterized as "promotional money laundering." United States v. McGahee, 257 F.3d 520, 526 (6th Cir. 2001). The intent can be either to promote the carrying on of specified unlawful activity or to violate 26 U.S.C. §§ 7201 or 7206 of the tax code. *See generally* 18 U.S.C. § 1956(a)(1). Subsections (a)(1)(A) and (a)(1)(B) of § 1956 have been interpreted as alternative means of committing the same offense. United States v. Navarro, 145 F.3d 580, 592 (3d Cir. 1998). *See also* United States v. Westine, 1994 WL 88831, 1994 U.S.App. LEXIS 5144 (6th Cir. 1994)(unpublished). As such, the instructions for subsections (a)(1)(A) and (a)(1)(B) are similar; the difference is in the mens rea element. For (a)(1)(A), the mens rea is intent, either to promote the carrying on of specified unlawful activity or to violate certain tax laws. For (a)(1)(B), which is covered in the next instruction, the mens rea is knowledge that the transaction is designed either to conceal the proceeds of specified unlawful activity or to avoid a reporting requirement.

If the defendant is charged with intent to violate §§ 7201 or 7206 of the Internal Revenue Code, 26 U.S.C. §§ 7201, 7206, a supplemental instruction on these provisions should be given.

Unlike the other significant terms, the term "proceeds" is not defined in the statute. The definition is from United States v. Haun, 90 F.3d 1096, 1101 (6th Cir. 1996). The government does not have to trace the origin of all the proceeds involved in the financial transactions to determine precisely which proceeds were used for which transactions. United States v. Nallie, 1994 WL 4722 at 2, 1994 U.S. App. LEXIS 230 at 5 (6th Cir. 1994)(unpublished)(*quoting* United States v. Jackson, 935 F.2d 832, 840 (7th Cir. 1991)). Also, the statute does not require that the entire property involved represent the proceeds of specified unlawful activity. United States v. Conner, 1991 WL 213756 at 4, 1991 U.S. App. LEXIS 25370 at 10 (6th Cir. 1991)(unpublished). As long as the jury can infer that a portion of the funds involved represented the proceeds of the specified unlawful activity, there is no minimum percentage requirement. *Westine*, 1994 WL at 2, 1994 U.S.App. LEXIS at 8.

It is an element of all crimes under subsection (a)(1) that the property involved in fact represent the proceeds of *specified unlawful activity*. See § 1956(a)(1). However, the defendant need only know that the property involved represents proceeds of *some form of unlawful activity*. The statute defines this mens rea in subsection (c)(1): "[T]he term 'knowing that the property

involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state, Federal or foreign law, regardless of whether or not such activity is specified in paragraph (7) [as specified unlawful activity]." This definition of the mens rea makes clear that although the property must actually represent proceeds of certain listed unlawful activities, the defendant need not know this. The government does not have to prove that the defendant knew the property represented proceeds of a particular type of unlawful activity as long as the defendant knew it represented proceeds of "some form of unlawful activity."

The statute requires that the defendant know that the property involved in the financial transaction represented the proceeds of "some form of unlawful activity." The statutory definition of this phrase is quoted *supra*. Subsection (a)(1) "does not require the government to prove that the defendant knew that the alleged unlawful activity was a felony..., as opposed to a misdemeanor, so long as the defendant knew that the laundered proceeds were derived from unlawful activity." United States v. Hill, 167 F.3d 1055, 1065 (6th Cir. 1999).

Conviction under this subsection of § 1956 can be based on an intent to promote the carrying on of specified unlawful activity. Several Sixth Circuit cases have defined intent to promote the carrying on of specified unlawful activity. In United States v. McGahee, *supra*, the court held that paying for personal goods, alone, was not sufficient to establish that the funds were used to promote an illegal activity. The court further stated that payment of the general business expenditures of a business that is used to defraud is not sufficient to establish promotion of the underlying crime; rather, the transaction "must be explicitly connected to the mechanism of the crime." *McGahee*, 257 F.3d at 527, *citing* United States v. Brown, 186 F.3d 661, 669-70 (5th Cir. 1999). *See also Haun*, 90 F.3d 1096 (evidence of promotion sufficient when checks for proceeds of fraudulent car sales were cashed or deposited into company's bank account); United States v. Reed, 167 F.3d 984, 992-93 (6th Cir. 1999)(evidence of promotion sufficient when money used to pay antecedent drug debt and ease payer/defendant's position); United States v. King, 169 F.3d 1035 (6th Cir. 1999) (evidence of promotion sufficient when proceeds used to pay for drugs).

The presence of four options for proving *mens rea* under subsection (a)(1) has raised unanimity issues. The Sixth Circuit has not addressed the question of whether an augmented unanimity instruction is required, but it has characterized subsections (a)(1)(A) and (a)(1)(B) as alternative bases for a conviction either of which is sufficient. *Westine*, 1994 WL at 2, 1994 U.S. App. Lexis at 7. Other circuits have found that a specific unanimity instruction is not required; rather, a general unanimity instruction is sufficient. These courts have concluded that the alternative mental states of subsection (a)(1) do not constitute multiple crimes but rather separate means of committing a single crime. *Navarro*, 145 F.3d at 592 n.6, *citing* United States v. Holmes, 44 F.3d 1150, 1155–56 (2d Cir. 1995) ((B)(i) and (B)(ii) are alternative improper purposes for single crime under (a)(1)). The Third Circuit reasoned that the fact that multiple purposes could satisfy the end of money laundering did not mean that Congress intended to create multiple offenses. Thus the absence of a specific unanimity instruction was not plain error. (This holding was limited in two ways: although a specific unanimity instruction was not given, a general one was; and the court was reviewing only for plain error. Whether the court would

decide the same way without these two conditions is unclear.) The Eighth Circuit has reached the same conclusion, finding that subsections (A)(i) and (B)(i) are two *mens rea* options under the one crime stated in (a)(1), so giving a general unanimity instruction rather than a specific one was not error. United States v. Nattier, 127 F.3d 655 (8th Cir. 1997). These cases suggest that giving Pattern Instruction 8.03 Unanimous Verdict is sufficient and that giving an augmented unanimity instruction is not required in § 1956(a)(1) prosecutions involving multiple mental states. *See also* Instruction 8.03B Unanimity Not Required – Means.

Attempted money laundering is also a crime under § 1956. If the crime of attempt is charged, the instructions should be supplemented by the instructions in Chapter 5.00 on Attempts.

The Committee recommends against giving an instruction recounting the statutory language because it would be difficult for the jury to absorb. See the 2005 Committee Commentary to Instruction 2.02.

**11.02 MONEY LAUNDERING – Domestic Financial Transaction (18 U.S.C. § 1956(a)(1)(B)(knowing the transaction is designed to conceal facts related to proceeds))**

(1) Count _____ of the indictment charges the defendant with [conducting] [attempting to conduct] a financial transaction in violation of federal law. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [conducted] [attempted to conduct] a financial transaction.

(B) Second, that the financial transaction involved property that represented the proceeds of [*insert the specified unlawful activity from § 1956(c)(7)*].

(C) Third, that the defendant knew that the property involved in the financial transaction represented the proceeds from some form of unlawful activity.

(D) Fourth, that the defendant knew that the transaction was designed in whole or in part
-- [to conceal or disguise the [nature] [location] [source] [ownership] [control] of the proceeds of [*insert the specified unlawful activity* from § 1956(c)(7)]]
-- [to avoid a transaction reporting requirement under state or federal law].

(2) Now I will give you more detailed instructions on some of these terms.

(A) The term "financial transaction" means [*insert the definition from § 1956(c)(4)]*.

(B) [The term "financial institution" means [*insert definition from 31 U.S.C. § 5312(a)(2) or the regulations promulgated thereunder*]].

(C) The word "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(D) The word "proceeds" includes what is produced by or derived from unlawful activity.

(E) The phrase "knew that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the defendant knew the funds involved in the transaction represented the proceeds of some form, though not necessarily which form, of activity that constitutes a felony under state or federal [foreign] law. [The government does not have to prove the defendant knew the property involved represented proceeds of a felony as long as he knew the property involved represented proceeds of some form of unlawful activity.]

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**Use Note**

Brackets indicate options for the court.

The definition of financial institution in paragraph (2)(B) should be given only when a financial institution is used to prove the presence of a financial transaction.

The final bracketed sentence in paragraph (2)(E) should be given only when the defendant raises an issue on whether he knew that the unlawful activity which generated the proceeds was a felony or misdemeanor.

## Committee Commentary Instruction 11.02

The purpose of this instruction is to outline the elements of the crime of money laundering through a domestic financial transaction based on a mens rea of knowledge that the transaction is designed to conceal facts related to proceeds. *See generally* § 1956(a)(1). The court has characterized this as "concealment money laundering," *see* United States v. McGahee, 257 F.3d 520, 526 (6th Cir. 2001). Subsections (a)(1)(A) and (a)(1)(B) of § 1956 have been interpreted as alternative means of committing the same offense. United States v. Navarro, 145 F.3d 580, 592 (3rd Cir. 1998). As such, the instructions for subsections (a)(1)(A) and (a)(1)(B) are similar; the difference is in the mens rea element. For subsection (a)(1)(A), covered in the preceding instruction, the statutory mens rea is intent to promote the carrying on of specified unlawful activity. For subsection (a)(1)(B), the statutory mens rea is knowledge that the transaction has particular purposes. The Sixth Circuit has acknowledged the mens rea for subsection (a)(1)(B) as knowledge, *see* United States v. Moss, 9 F.3d 543, 551 (6th Cir. 1993), *but see* United States v. Loehr, 966 F.2d 201, 204 (6th Cir. 1992)(mens rea for (a)(1)(B) is intent) and United States v. Beddow, 957 F.2d 1130, 1134-35 (6th Cir. 1992)(same). The pattern instruction tracks the statutory language.

The term "financial transaction" is defined in subsection 1956(c)(4). Some examples of covered transactions include transactions at financial institutions (e.g., deposits, withdrawals, check cashings); transfers of title to real estate, cars, boats and aircraft; and wire transfers. The Committee recommends that the court define financial transaction by quoting only the specific portion of the definition involved in the case.

Unlike the other significant terms, the term "proceeds" is not defined in the statute. The definition is from United States v. Haun, 90 F.3d 1096, 1101 (6th Cir. 1996). The government does not have to trace the origin of all the proceeds involved in the financial transactions to determine precisely which proceeds were used for which transactions. United States v. Nallie, 1994 WL 4722 at 2, 1994 U.S. App. LEXIS 230 at 5 (6th Cir. 1994)(unpublished)(*quoting* United States v. Jackson, 935 F.2d 832, 840 (7th Cir. 1991)). Also, the statute does not require that the entire property involved represent the proceeds of specified unlawful activity. United States v. Conner, 1991 WL 213756 at 4, 1991 U.S. App. LEXIS 25370 at 10 (6th Cir. 1991)(unpublished). As long as the jury can infer that a portion of the funds involved represented the proceeds of the specified unlawful activity, there is no minimum percentage requirement. United States v. Westine, 1994 WL 88831 at 2, 1994 U.S.App. LEXIS 5144 at 8 (6th Cir. 1994)(unpublished).

It is an element of all crimes under (a)(1) that the property involved in fact represent the proceeds of *specified unlawful activity*. See § 1956(a)(1). However, the defendant need only know that the property involved represents proceeds of *some form of unlawful activity*. The statute defines this mens rea in subsection (c)(1): "[T]he term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal or foreign law, regardless of whether or not such activity is specified in paragraph (7) [as specified unlawful activity]." This definition of the mens rea makes clear that although the property must actually represent proceeds of certain listed unlawful activities, the defendant need not know this. The government does not have to prove that the defendant knew the property represented proceeds of a particular type of unlawful activity as long as the defendant knew it represented proceeds of "some form of unlawful activity."

The statute requires that the defendant know that the property involved in the financial transaction represented the proceeds of "some form of unlawful activity." The statutory definition of this phrase is quoted in the preceding paragraph. Subsection (a)(1) "does not require the government to prove that the defendant knew that the alleged unlawful activity was a felony..., as opposed to a misdemeanor, so long as the defendant knew that the laundered proceeds were derived from unlawful activity." United States v. Hill, 167 F.3d 1055, 1065 (6th Cir. 1999).

Under § 1956(a)(1)(B), the government must prove that the defendant engaged in a financial transaction in addition to the acquisition of the unlawful proceeds. United States v. Hamrick, 983 F.2d 1069 (6th Cir. 1992). The financial transaction must go beyond the defendant's involvement in the underlying specified unlawful activity. *Id.*

Proof that the defendant knew that a transaction was designed to conceal or disguise facts related to the proceeds requires the government to introduce more evidence than the simple fact of a retail purchase using illegally obtained money. United States v. Marshall, 248 F.3d 525, 538 (6th Cir. 2001). The Sixth Circuit declined to infer evidence of a design to disguise proceeds solely because the defendant bought items with investment value and the defendant bought items from a pool of money derived from another illegal transaction. *Marshall*, 248 F.3d at 539-41. The court commented, "We are also of the opinion that a few isolated purchases of wearable or consumable items directly by the wrongdoer is not the type of money-laundering transaction that Congress had in mind when it enacted § 1956(a)(1)(B)(i), especially where the value of the items is relatively small in relation to the amount stolen by the defendant." *Id.* at 541. *See also McGahee*, 257 F.3d at 527-28.

The transaction reporting requirements under federal law referred to in paragraph (D) of the instruction include at least the three reporting requirements of the Bank Secrecy Act, 31 U.S.C. §§ 5313, 5314, 5316 and the trade or business transaction reporting requirement under 26 U.S.C. § 6050I. Of course, the statutory language, which refers only to "a transaction reporting requirement under state or federal law," may also include other reporting requirements.

The presence of four options for proving *mens rea* under subsection (a)(1) has raised unanimity issues. The Sixth Circuit has not addressed the question of whether an augmented unanimity instruction is required, but it has characterized subsections (a)(1)(A) and (a)(1)(B) as alternative bases for a conviction either of which is sufficient. *Westine*, 1994 WL at 2, 1994 U.S. App. LEXIS at 7. Other circuits have found that a specific unanimity instruction is not required; rather, a general unanimity instruction is sufficient. These courts have concluded that the alternative *mens reas* of subsection (a)(1) do not constitute multiple crimes but rather separate means of committing a single crime. *Navarro*, 145 F.3d at 592 n.6, *citing* United States v. Holmes, 44 F.3d 1150, 1155–56 (2d Cir. 1995) ((B)(i) and (B)(ii) are alternative improper purposes for single crime under (a)(1)). The Third Circuit reasoned that the fact that multiple purposes could satisfy the end of money laundering did not mean that Congress intended to create multiple offenses. Thus the absence of a specific unanimity instruction was not plain error. (This holding was limited in two ways: although a specific unanimity instruction was not given, a general one was; and the court was reviewing only for plain error. Whether the court would decide the same way without these two conditions is unclear.) The Eighth Circuit has reached the same conclusion, finding that subsections (A)(i) and (B)(i) are two *mens rea* options under the one crime stated in (a)(1), so giving a general unanimity instruction rather than a specific one was not error. United States v. Nattier, 127 F.3d 655 (8th Cir. 1997). These cases suggest that giving Pattern Instruction 8.03 Unanimous Verdict is sufficient and that giving an augmented unanimity instruction is not required in § 1956(a)(1) prosecutions involving multiple mental states. *See also* Instruction 8.03B Unanimity Not Required – Means.

**11.03 MONEY LAUNDERING – International Transportation (18 U.S.C. § 1956(a)(2)(A)(intent to promote the carrying on of specified unlawful activity))**

(1) Count ____ of the indictment charges the defendant with [attempting to] [transport[ing]] [transmit[ting]] [transfer[ring]] a monetary instrument or funds in violation of federal law. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [attempted to] [transport[ed]] [transmit[ted]] [transfer[red]] a monetary instrument or funds.

(B) Second, that the defendant's [attempted] [transportation] [transmission] [transfer] was [from a place in the United States to or through a place outside the United States] [to a place in the United States from or through a place outside the United States].

(C) Third, that the defendant's [attempted] [transportation] [transmission] [transfer] of the monetary instrument or funds was done with the intent to promote the carrying on of [*insert the specified unlawful activity from § 1956(c)(7)*].

(2) Now I will give you more detailed instructions on some of these terms.

(A) The term "monetary instruments" means
--[coin or currency of the United States, or of any other country]
--[travelers' checks]
--[personal checks]
--[bank checks]
--[money orders]
--[investment securities or negotiable instruments, in bearer form or otherwise in such form that title passes upon delivery].

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**Use Note**

Brackets indicate options for the court.

**Committee Commentary Instruction 11.03**

The purpose of this instruction is to outline the elements of the crime of money laundering through international transportation of monetary instruments or funds with the intent to promote specified unlawful activity as defined in 18 U.S.C. § 1956(a)(2)(A). Subsection

(a)(2)(A) has two important characteristics. First, it is based on a mens rea of intent to promote the carrying on of specified unlawful activity, as contrasted with the other part of (a)(2) which is based on a mens rea of knowledge. Second, subsection (a)(2)(A) contains no requirement that the funds be the proceeds of specified unlawful activity. In other words, the monetary instrument or funds need not be dirty; the money used by the defendant under this subsection can be from a completely legitimate source. It is how the money was used, not how it was generated, that defines the defendant's conduct as criminal. *See generally* United States v. Hamilton, 931 F.2d 1046 (5th Cir. 1991); United States v. Piervinanzi, 23 F.3d 670 (2d Cir. 1994).

Subsection 1956(a)(2) can be prosecuted with either of two mental states, see subsections (a)(2)(A)(intent) and (a)(2)(B)(knowing). If unanimity is an issue, the court should refer to Instruction 8.03 Unanimous Verdict and Instruction 8.03B Unanimity Not Required – Means.

**11.04 MONEY LAUNDERING – International Transportation**
**(18 U.S.C. § 1956(a)(2)(B)(knowing that the transportation involves proceeds of some form of unlawful activity and that it is designed to conceal facts related to proceeds))**

(1) Count _____ of the indictment charges the defendant with [attempting to] [transport[ing]] [transmit[ting]] [transfer[ring]] a monetary instrument or funds in violation of federal law. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [attempted to] [transport[ed]] [transmit[ted]] [transfer[red]] a monetary instrument or funds.

(B) Second, that the defendant's [attempted] [transportation] [transmission] [transfer] was [from a place in the United States to or through a place outside the United States] [to a place in the United States from or through a place outside the United States].

(C) Third, that the defendant knew that the monetary instrument or funds involved in the [transportation] [transmission] [transfer] represented the proceeds of some form of unlawful activity.

(D) Fourth, that the defendant knew that the [transportation] [transmission] [transfer] was designed in whole or in part
--[to conceal or disguise the [nature] [location] [source] [ownership] [control] of the proceeds of [*insert the specified unlawful activity from § 1956(c)(7)*]]
--[to avoid a transaction reporting requirement under state or federal law].

(2) Now I will give you more detailed instructions on some of these terms.

(A) The term "monetary instruments" means
--[coin or currency of the United States, or of any other country]
--[travelers' checks]
--[personal checks]
--[bank checks]
--[money orders]
--[investment securities or negotiable instruments, in bearer form or otherwise in such form that title passes upon delivery].

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**Use Note**

Brackets indicate options for the court.

## Committee Commentary Instruction 11.04

The purpose of this instruction is to outline the elements of the crime of money laundering through international transportation of monetary instruments or funds based on a mens rea of knowledge. Subsection (a)(2)(B) requires that the defendant have two types of knowledge. First, the defendant must know that the instruments or funds represent the proceeds of some form of unlawful activity. Second, the defendant must know that the transportation, transmission or transfer was designed in whole or in part either (i) to conceal or disguise the nature, location, source, ownership or control of the proceeds of specified unlawful activity, or (ii) to avoid a transaction reporting requirement.

Subsection 1956(a)(2) can be prosecuted with either of two mental states, see subsections (a)(2)(A)(intent) and (a)(2)(B)(knowing). If unanimity is an issue, the court should refer to Instruction 8.03 Unanimous Verdict and Instruction 8.03B Unanimity Not Required – Means.

**11.05 MONEY LAUNDERING –Undercover Investigation (18 U.S.C. § 1956(a)(3))**

(1) Count ____ of the indictment charges the defendant with [conducting] [attempting to conduct] a financial transaction in violation of federal law. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [conducted] [attempted to conduct] a financial transaction.

(B) Second, that the property involved in the financial transaction was represented to be [the proceeds of [*insert the specified unlawful activity from § 1956(c)(7)*]] [property used to conduct or facilitate [*insert the specified unlawful activity from § 1956(c)(7)*]].

(C) Third, that the defendant had the intent

[to promote the carrying on of specified unlawful activity]

[to conceal or disguise the [nature] [location] [source] [ownership] [control] of property believed to be the proceeds of specified unlawful activity]

[to avoid a transaction reporting requirement under state or federal [or foreign] law].

(2) Now I will give you more detailed instructions on some of these terms.

(A) The term "financial transaction" means [*insert definition from § 1956(c)(4)*].

(B) [The term "financial institution" means [*insert definition from 31 U.S.C. § 5312(a)(2) or the regulations promulgated thereunder*]].

(C) The word "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(D) The word "proceeds" includes what is produced by or derived from unlawful activity.

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**Use Note**

Brackets indicate options for the court.

The definition of financial institution in paragraph (2)(B) should be given only when a financial institution is used to prove the presence of a financial transaction.

**Committee Commentary Instruction 11.05**

The purpose of this instruction is to outline the elements of the crime of money laundering through a government undercover investigation as defined in 18 U.S.C. § 1956(a)(3). Subsection (a)(3) combines parts of subsections (a)(1)(A) and (a)(1)(B). One difference in subsection (a)(3) is that the property involved need only be "represented" to be the proceeds of the specified unlawful activity. The funds used by law enforcement officials to pursue the undercover investigation need not be unlawfully generated. It is only necessary that the defendant "believed" the funds to be the proceeds of other crimes. United States v. Palazzolo, 1995 WL 764416 at 4, 1995 U.S. App. LEXIS 36853 at 10-11 (6th Cir. 1995)(unpublished). The representations made by law enforcement officials must relate to the specified unlawful activity. United States v. Loehr, 966 F.2d 201, 204 (6th Cir. 1992).

A second difference between § 1956(a)(3) and (a)(1) is that subsection (a)(3) requires a mens rea of intent whereas some parts of subsection (a)(1) allow the lesser mens rea of knowing. *See* subsection (a)(1)(B). Congress intended this difference to "fine tune" the sting provision. *See* 134 Cong. Rec. § S17,365 (daily ed. Nov. 10, 1988).

The involvement of a financial institution may be used to establish the presence of a financial transaction. *See* § 1956(c)(4). The term "financial institution" is defined in § 1956(c)(6) by reference to 31 U.S.C. § 5312 (a)(2) or the regulations thereunder.

Unlike the other significant terms, the term "proceeds" is not defined in the statute. The definition is from United States v. Haun, 90 F.3d 1096, 1101 (6th Cir. 1996). The government does not have to trace the origin of all the proceeds involved in the financial transactions to determine precisely which proceeds were used for which transactions. United States v. Nallie, 1994 WL 4722 at 2, 1994 U.S. App. LEXIS 230 at 5 (6th Cir. 1994)(unpublished)(*quoting* United States v. Jackson, 935 F.2d 832, 840 (7th Cir. 1991)). Also, the statute does not require that the entire property involved represent the proceeds of specified unlawful activity. United States v. Conner, 1991 WL 213756 at 4, 1991 U.S. App. LEXIS 25370 at 10 (6th Cir. 1991)(unpublished). As long as the jury can infer that a portion of the funds involved represented the proceeds of the specified unlawful activity, there is no minimum percentage requirement.

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requirement. United States v. Westine, 1994 WL 88831 at 2, 1994 U.S.App. LEXIS 5144 at 8 (6th Cir. 1994)(unpublished).

**11.06 MONEY LAUNDERING – Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity (18 U.S.C. § 1957)**

(1) Count ___ of the indictment charges the defendant with [engaging] [attempting to engage] in a monetary transaction in violation of federal law. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant knowingly [engaged] [attempted to engage] in a monetary transaction.

(B) Second, that the monetary transaction was in property derived from specified unlawful activity.

(C) Third, that the property had a value greater than $10,000.

(D) Fourth, that the defendant knew that the transaction was in criminally derived property.

(E) Fifth, that the monetary transaction took place [within the United States] [within the United States' jurisdiction] [outside the United States but the defendant is a United States person].

(2) Now I will give you more detailed instructions on some of these terms.

(A) The term "monetary transaction" means [*insert definition from § 1957(f)(1)*].

(B) The term "specified unlawful activity" means [*insert definition from § 1956(c)(7)]*.

(C) The term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense.

(D) [The term "United States person" includes [*insert definition from 18 U.S.C. § 3077*]].

(3) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**Use Note**

Brackets indicate options for the court.

**Committee Commentary Instruction 11.06**

The purpose of this instruction is to outline the elements of the crime of engaging in monetary transactions in property derived from specified unlawful activity. The instruction is based primarily on United States v. Leek, 1996 WL 99811, 6, 1996 U.S.App. LEXIS 6106, 6 (6th Cir. 1996)(unpublished).

The term "specified unlawful activity" is defined in § 1957(f)(3) by reference to § 1956(c)(7).

The term "criminally derived property" is defined in § 1957(f)(2).

It is an element that the property in the monetary transaction must in fact be the proceeds of *specified unlawful activity*. See § 1957(a). However, the defendant need only know that the property involved was *criminally derived.* The statute makes this clear in § 1957(c), which states: "In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity." Thus, although the property must in fact be derived from the certain listed crimes constituting specified unlawful activity, the defendant need not know this. The government does not have to prove that the defendant knew the property was derived from a particular type of unlawful activity as long as the government proves that defendant knew it was criminally derived.

In order for property to qualify as criminally derived under § 1957, the underlying criminal activity must have been completed and the defendant must have obtained, controlled, or actually received the tainted money. United States v. Wilson, 1993 WL 406798, 2, 1993 U.S. App. LEXIS 26640, 3-4 (6th Cir. 1993)(unpublished)(transaction did not involve criminally derived property because the defendants had not obtained possession of the illegal funds nor were the funds at the defendant's disposal when the transfer was made). The *Wilson* holding was based on United States v. Johnson, 971 F.2d 562 (10th Cir. 1992). Later Sixth Circuit cases have distinguished *Johnson* and limited its impact. *See* United States v. Griffith, 17 F.3d 865, 878-79 (6th Cir. 1994)(stating that *Johnson* holding should not "be applied beyond its limited context" and affirming defendant's § 1957 conviction because he was in control of the criminally derived property before he engaged in the illegal monetary transaction).

Jurisdiction for § 1957 is based on the monetary transaction affecting interstate or foreign commerce. See § 1957(f)(1). The government need show only a *de minimus* effect upon commerce; this standard for § 1957 was not affected by United States v. Lopez, 514 U.S. 549 (1995). United States v. Ables, 167 F.3d 1021, 1029-30 (6th Cir. 1999). However, "the government still must prove that the transaction involved had at least some impact on interstate commerce." United States v. Peterson, 1999 WL 685917, 10, 1999 U.S. App. LEXIS 20336, 28 (6th Cir. 1999)(unpublished)(convictions reversed because no participation in or effect on commerce).

Attempted money laundering is also a crime under § 1957. If the crime of attempt is charged, the instructions should be supplemented by the instructions in Chapter 5.00 on Attempts.

The Committee recommends against giving an instruction recounting the statutory language because it would be difficult for the jury to absorb. See the 2005 Committee Commentary to Instruction 2.02.